

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RUTHIE FEINSTEIN, et al., etc.,)
)
)
Plaintiffs,)
)
)
v.) No. 08 C 6354
)
)
CONAGRA FOODS, INC.,)
)
)
Defendant.)

MEMORANDUM ORDER

ConAgra Foods, Inc. ("ConAgra") has filed a timely Notice of Removal of this action from the Circuit Court of Cook County, invoking federal jurisdiction on diversity of citizenship grounds. This memorandum order is issued sua sponte to schedule an early status hearing to look into the existence or nonexistence of subject matter jurisdiction--as our Court of Appeals taught more than two decades ago in Wis. Knife Works v. Nat'l Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) and has regularly repeated (albeit in somewhat different language) since then:

The first thing a federal judge should do when a complaint is filed is check to see that federal jurisdiction is properly alleged.

Because Illinois state law precludes personal injury plaintiffs from including an express ad damnum in their complaints, ConAgra has perforce been compelled to make its own judgment as to the amount in controversy. It has certainly done so thoughtfully, but the fact remains that if none of plaintiffs

Ruthie, James and Eliana Feinstein intended by filing this action to seek a recovery in excess of \$75,000 (exclusive of interest and costs), they rather than ConAgra would be entitled to their choice of forum in the state court system.

Accordingly this action is set for an initial status hearing at 9 a.m. November 12, 2008. If it then appears that ConAgra is right in its assertion that more than \$75,000 is in controversy, this Court will be pleased to retain the case and address the next steps to be taken in this District Court. If however such is not the case, an order would be called for remanding the case to the state court for lack of subject matter jurisdiction under 28 U.S.C. §1447(c).



Milton I. Shadur
Senior United States District Judge

Date: November 6, 2008